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CANADIAN CHILDREN'S LAW: A COURSEBOOK

PART I

by
DON STUART
and
NICHOLAS BALA

Prepared for use of students at

FACULTY OF LAW
QUEEN'S UNIVERSITY
KINGSTON, ONTARIO

July, 1986

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PREFACE

These cases, articles and comments deal with some of the legal problems faced by children in Canadian society. They are designed to familiarize students with substantive and procedural issues of law, but they also consider the many tactical and ethical problems which arise, particularly as they relate to the representation of children and their parents. Issues are also considered from a broader societal perspective.

Volume I deals with child-welfare legislation, statutes enacted by provincial governments to provide State assistance to children whose families are considered incapable of adequately caring for them. A central theme of these materials is developed early; there is an inevitable tension between the rights and interests of a child, its parents and the State. In many cases there is bitter controversy about how these competing points of view should be balanced; the task facing the courts can be extraordinarily difficult. One chapter is devoted to adoption - the legal establishment of a parental relationship between a child and persons other than the biological parents, and the severing of ties with the natural parents. In this section of the materials, comparisons are made between Child Welfare Act, and Ontario's new Child and Family Services Act, which was proclaimed in force on November 1, 1985, with the exception of ss.109-119, 124-126, 157 and 162-174.

Volume II concerns youthful offenders - basically, it is a consideration of the problems faced by children who are charged with violating the criminal law. This Volume begins by considering the nature and causes of delinquency, and proceeds to deal with the numerous legal issues which arise. The new federal Young Offenders Act is compared with the Juvenile Delinquents Act, which was repealed on April 2, 1984.

Though the bulk of these materials are of a legal nature, we have included many pieces written by members of disciplines other than law, including psychology, psychiatry, medicine, sociology, criminology and social work. We believe that it is crucial for a lawyer to have an appreciation of the approaches taken by other professionals to the cases he or she is handling in court. A lawyer will have frequent contact with members of these professions, and must be aware of their roles and able to communicate effectively with them. Further, no child or family has a problem which can be viewed as strictly legal; to be effective as a lawyer, one must be aware of the broader context of situations.

These materials suffer a flaw which plagues all Canadian legal scholarship; they fail to do justice to the diversity of a nation with twelve distinct territorial jurisdictions, and one overriding federal system. In dealing with topics which are the subject of provincial jurisdiction, we have focused on the situation in Ontario, the largest province

with the most extensive amount of primary and secondary material available.

A major challenge facing students and teachers in this area is that the relevant legislation is complex and contains many detailed provisions. The Charter of Rights and Freedoms is also adding a new dimension to the study of many problems. Our major aim has been to concentrate on law and issues most basic and unique to children. We have attempted to focus on the most important topics in some depth rather than deal with all issues in a more superficial fashion. Statutory provisions essential in our purposes have been reproduced in these materials, but serious students will want to have access to the complete text of the Child and Family Services Act and the Young Offenders Act..

There are a number of important legal problems relating to children which are not considered at all in these materials. In particular, questions relating to custody, access and child support are left to traditional Family Law materials. Many areas of law have special rules relating to children (for example, torts, contracts, property, health law and civil procedure); and these topics are not considered here.

Readers should note that in excerpts from articles, books and cases, we have generally omitted footnotes and endnotes.

These materials borrow heavily from Canadian Children's Law: Cases, Notes and Materials (Butterworths, 1982) by Nicholas Bala, Heino Lilles and George Thomson, and we acknowledge our debt to these authors and all who contributed to that book. Sheila Noonan, when Associate Professor at Queen's, prepared the version of these materials in December, 1984, with the assistance of Janet Mosher of Queen's Law '85. Professor Joanne Wildgoose of Windsor updated Volume I of these materials in 1985, and two students Marianne Kroes of Windsor Law "86 and Jim Hughes of Queen's Law '86 provided valuable research assistance. We are most grateful to Rick Lindgren of Queen's Law '86 who worked diligently to improve the 1986 edition and put it in final form, and to Elaine Stroud, who patiently and cheerfully provided secretarial services to assist in the preparation of these volumes.

July, 1986
Kingston, Ontario

Don Stuart
Nicholas Bala

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